IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

GARRY L. MOUNCE,

Appellant,

v.

ORANGE COUNTY, FLORIDA,

Appellee.
_____/

CASE NO.: 2013-CV-000047-A-O
Lower Case No: CEB-2013-213903Z

Appeal from a decision of
the Code Enforcement Board
Orange County, Florida

Garry L. Mounce, Pro Se, Appellant.

P. Andrea De Loach, Assistant County Attorney,
for Appellee.

Before MIHOK, LUBET, and G. ADAMS, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING CODE ENFORCEMENT BOARD

Appellant Garry Mounce seeks review of an Orange County Code Enforcement Board decision finding him in violation of several provisions of the county code. The Court's review of the Board's decision is not de novo, but is limited to whether procedural due process was accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Court's review is also limited to evidence and arguments presented at the Board hearing. § 162.11, Florida Statutes; *Dep't of Transp. v. Baird*, 992 So. 2d 378, 382 (Fla. 5th DCA 2008).

Petitioner owns a 1.44 acre tract of land in unincorporated Orange County zoned A-2, agricultural, with a land use designation of residential. He was cited by county code enforcement for several code violations: improperly constructed block wall, erection of accessory building without permit, conducting commercial activity in a residential neighborhood, open storage of trash and debris, auto repair, storage of inoperable vehicles, and additions to the main house without permit. He was given time to take corrective measures. Due to his alleged noncompliance, the County requested a Code Enforcement Board hearing. The hearing proceeded on all the alleged violations except the block wall problem, which had been remedied.

The Code Enforcement Hearing

The hearing was conducted on May 13, 2013. Petitioner was present and given the opportunity to speak, to have others speak on his behalf, to present evidence, to question county witnesses, and to engage in discussion with Board members. The principal argument Appellant raised was that his property was a farm and he was therefore exempt from county building and zoning rules under section 604.50, Florida Statues. This provision states that "any nonresidential farm building. . . is exempt from the Florida Building Code and any county or municipal code."

Appellant presented evidence that he was producing energy from an array of solar panels and selling it. The Board said it was not challenging the legality of that operation. He claimed to have started a fish farm in a pond on the property. He also testified that he used the property to repair and maintain other people's agricultural equipment. There was no evidence he was producing any crops or had any livestock other than the fish. Appellant admitted he had not applied for any special use permits or applied to the county's planning and zoning commission to have the designation of his property changed from residential to farm.

The code enforcement officer testified that there was a large, warehouse-type building on the property which had been built without a permit. She presented evidence that Appellant initially applied for a permit in 2001 but had later canceled the permitting process. The officer also presented testimony and photographs of the trash and debris, the inoperable vehicles parked on the lot, and the presence of commercial vehicles. She said she found that Appellant's electrical business listed the property's address as the address of the business. She also testified about the unpermitted addition to the residence on the property.

The Board found that Petitioner had committed each of the charged code violations and directed him to remedy them.

Arguments on Appeal

Appellant's pro se pleadings—a Brief, and a "Comments to Appellee's Standard of Review," which the Court considers as a Reply Brief—do not exactly phrase the issues in terms of the *Deerfield Beach* standard of review but the Court will frame them within that context to the extent possible. Claims that do not address this standard and Appellant's attempts to introduce new evidence and exhibits cannot be considered.

Due Process

In his initial Brief, Appellant does not raise any due process issues, except to object that he has been singled out for code violations while his neighbors were not cited. This is not a valid due process argument. In his Comments, he complains that his due process rights were violated because the Board refused to accept his legal arguments or credit his testimony, but again, this is not a due process violation. He was clearly given notice and the opportunity to be heard, to present witnesses and evidence, and to question the evidence against him. Together, these satisfy

the requirements of administrative due process. *Carillon Cmty. Residential v. Seminole County*, 45 So. 3d 7, 10 (Fla. 5th DCA 2010).

Competent Substantial Evidence

Appellant does not deny he has an unpermitted structure on his property, but instead has attempted to explain why it was built without a permit. He does not deny the unpermitted addition to his house, or the presence of various vehicles under repair, or trash and debris. He claims that the vehicle repair and maintenance work was part of a farming cooperative he was participating in with other area farmers, but the Board could reasonably conclude that this work was commercial and not agricultural. There was competent, substantial evidence on the record supporting each one of the code violations.

Essential Requirements of Law

Although he does not use the terminology, Appellant's primary contention is that the Board's order is a departure from the essential requirements of law because it ignores several Florida statutes relating to the use of agricultural land.

Appellant contends that his property qualifies as a farm under section 823.14, Florida Statutes, and thus, under section 604.50, Florida Statutes, he is not bound by any zoning rules regarding the types of structures he may build on his property. Section 823.14(3)(a) defines a farm as "the land, buildings, support facilities, machinery and other appurtenances used in the production of farm or aquaculture products." Section 604.50 states that "any nonresidential farm building. . . is exempt from the Florida Building Code and any county or municipal code."

Appellant did present some evidence that he was involved in aquaculture, namely an unsupported claim that he had stocked his pond years ago and expected to harvest the fish in the future. He presented no evidence that the operation met the statutory definition of aquaculture or

was certified as required by section 597.004, Florida Statues. He did not demonstrate the unpermitted building was being used in his aquaculture activities. In any case, the Board did not find any code violation specifically regarding the pond. Appellant's claim that the production of solar energy qualifies his property as a farm is spurious as electricity is clearly not a "farm or aquaculture product," but the county did not cite him for any violations relating to solar energy production.

Most importantly, the Board concluded that it did not have the authority to recognize his farm exemption claim. A-2 is a zoning classification which permits certain agricultural uses defined by Section 38-74 through 77 of the Orange County Code (none of which activities Appellant seemed to be engaged in). However, the mere fact that property is zoned A-2 and the owner is engaged in some agricultural activities does not automatically qualify the parcel as a farm under section 604.50, despite Appellant's adamant insistence on this point.

Several Board members explained to Appellant that his property was designated residential and that if he wanted to obtain the farm exemption, he would have to apply to the proper county agency to have his property designated a farm. The Board correctly told Appellant that its authority was limited to enforcing the code with regard to the current zoning status of any given parcel of land.

Appellant admitted he had not made any attempts to change the land use designation through appropriate channels. It was not within the purview of the Code Enforcement Board to decide whether Appellant's property would or should be exempted from the county code as a farm, and it is not function of the Court to make this decision.

Conclusion

Appellant was afforded due process and there was competent, substantial evidence supporting each of the code violations. The Board did not depart from the essential requirements of law by requiring Appellant to comply with the zoning and land use designation provisions currently applicable to his property.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Orange County Enforcement Board's "Findings of Fact, Conclusions of Law and Order" entered May 15, 2013 is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 2nd day of June, 2014.

/S/
A. THOMAS MIHOK
Presiding Circuit Judge

LUBET and G. ADAMS, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was furnished to: **Garry L. Mounce**, 9056 Fryland Road, Orlando, Florida 32817 and **P. Andrea DeLoach, Assistant County Attorney**, Orange County Attorney's Office-Litigation Section, P.O. Box 1393, Orlando, Florida 32802-1393, on this 2nd day of June, 2014.

/S/
Judicial Assistant